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In the High Court of Judicature at Madras

Dated:18.04.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K. SAMPATHKUMAR

Habeas Corpus Petition No.58 of 2006

Chellamuthu .. Petitioner

vs.

1. The District Magistrate &
   District Collector
   Perambalur District
   Perambalur.

2. The Secretary to Govt.,
   of Tamil Nadu
   Prohibition & Excise Department
   Government of Tamil Nadu
   Fort St. George
   Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus directing the respondents to produce the detenu namely Padaiyappa @ Marudupondy @ Marudupondian, Son of Marudhamuthu, before this Court who is detained as per the order of detention passed by the first respondent in Crl.M.P.No.40/2005 dated 30.9.2005 and confined at Central Prison, Trichy and set him at liberty and further direction to call for the records relating to the abovesaid order and quash the same.

For petitioner : Mr. K. Manivasakam

For respondents : Mr. Abudukumar Rajaratrhinam
Govt., Advocate (Crl.)

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

The petitioner by name Chellamuthu, challenges the impugned order of detention dated 30.09.2005, detaining her brother Padaiyappa @ Marudupondy @ Marudu Pondian, as "Boot-Legger" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982").

2. Heard both sides.

3. The learned counsel for the petitioner at the foremost submitted that the earlier bail order dated 08.09.2005 was sent to the detaining authority by way of additional affidavit dated 29.09.2005. Inasmuch as the second dismissal order dated 30.09.2005 though available in the paper book (page 76), there is no explanation how the said document was sent to the detaining authority. According to him, in the absence of a covering letter or additional affidavit with reference to the said document, viz., dismissal of bail petition dated 30.09.2005, the ultimate order passed by the detaining authority is liable to be quashed. In support of the above contention, he relied on an un-reported decision of this Court dated 21.12.1999 made in HCP.No.875 of 1999 (M. Kasinathan vs. District Collector, Thiruvarur). In that decision, the said Division Bench, relying on an earlier decision in HCP.No.1298 of 1998, after finding that whenever any subsequent document is forwarded tot he detaining authority by the sponsoring authority subsequent to the filing of his affidavit, the same should be accompanied by a covering letter / additional affidavit, failing which the order of detention cannot be sustained, allowed the habeas corpus petition and set aside the order of detention.

4. Now, in the light of the above position, we verified the materials placed. It is true that the order dated 30.09.2005 is available in the paper book. It shows that the same was sent to the detaining authority. However, as rightly pointed out there is no covering letter or additional affidavit forwarding the said order dated 30.09.2005. It is not in dispute that even in the affidavit dated 29.09.2005, there is no reference to the order dated 30.09.2005. Obviously it cannot be, since the same was passed subsequent to the additional affidavit dated 29.09.2005. In the light of the above factual position and in view of the decision relied on by the learned counsel for the petitioner, we accept the contention raised by the learned counsel for the petitioner. On this ground, the impugned detention order is quashed; accordingly, this petition is allowed. The order of detention impugned in the petition is set aside and the

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detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Magistrate &
   District Collector
   Perambalur District
   Perambalur.

2. The Secretary to Govt.,
   of Tamil Nadu
   Prohibition & Excise Department
   Government of Tamil Nadu
   Fort St. George
   Chennai 600 009.

3. The Joint Secretary to Govt.,
   Public (Law and Order) Department
   Fort St. George
   Chennai 600 009.

4. The Superintendent
   Central Prison, Tiruchirappalli.

5. The Public Prosecutor
   High Court, Madras.

1 cc to Mr.K.Manivasagam, Advocate, SR.19666

jrg (co)

dv/24.4.06

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